BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

FRED W. LLOYD Claimant	)	
VS.	)	
GRAVES MENU MAKER FOODS, INC. Respondent	)	Docket No. 1,053,530
AND	)	
WAUSAU UNDERWRITERS INS. CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the August 2, 2012, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on December 4, 2012. William L. Phalen, of Pittsburg, Kansas, appeared for claimant. Heather A. Howard, of Overland Park, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found that claimant suffered personal injury by accident that arose out of and in the course of his employment with respondent on September 29, 2010 and that claimant had a 15 percent functional disability. The ALJ also found that claimant was entitled to a 74.66 percent work disability based on a 100 percent wage loss and a 49.33 percent task loss. The ALJ also ordered respondent to pay claimant's medical bills as set out in Exhibit 1 to the regular hearing, in accordance with the Kansas Medical Fee Schedule.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Respondent argues that claimant's accident was the result of a personal risk and did not arise out of and in the course of his employment and, therefore, claimant is not entitled to workers compensation benefits. Respondent further contends that the medical

bills from St. John's Regional Medical Center were not causally related to claimant's alleged work injury. In its Application for Review, respondent listed as an issue the nature and extent of claimant's disability. Nature and extent of disability was not listed as an issue in its brief to the Board, however, nor did respondent make any argument in its brief on that issue.

Claimant asks that the Board affirm the ALJ's Award in its entirety. He asserts he suffered injuries from an accident that arose out of and in the course of his employment with respondent and that the ALJ was correct in ordering respondent to pay his medical bills from St. John's Regional Medical Center.

The issues for the Board's review are:

(1) Did claimant suffer an accidental injury that arose out of and in the course of his employment?

(2) Are the medical bills from St. John's Regional Medical Center causally related to claimant's alleged work injury?

(3) What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant worked for respondent, a company that delivers meat and produce to restaurants, nursing homes and convenience stores, as a truck driver and delivery person. He worked out of a facility in Pittsburg, Kansas. On September 29, 2010, claimant was dispatched by his supervisor, John Epperson, to go to Joplin, Missouri, to meet with Mickey Killingsworth, the manager of the respondent's Vinita, Oklahoma, plant in order to pick up some tables and chairs and deliver them to the Vinita office. Claimant had flu-like symptoms that day. He was weak and starting to feel sick to his stomach. Claimant testified he told Mr. Epperson that he was sick and did not think he could make it to Joplin. Mr. Epperson told him to go anyway and that he could go home when he returned. Mr. Epperson denied claimant said he was too sick to drive. Mr. Epperson testified he would not have sent claimant if he had known claimant was sick. Claimant drove to Joplin and met Mr. Killingsworth at a restaurant.

Claimant testified that upon getting to the restaurant in Joplin, he told Mr. Killingsworth he was sick, needed some Tums, and also needed to use the restroom because of his flu-like symptoms. Mr. Killingsworth gave claimant some Tums, and claimant then used the restaurant's restroom. Mr. Killingsworth testified that when claimant came into the restaurant, the first thing he said was that he needed to use the restroom, but he did not mention being sick. When claimant came back from the restroom, he told Mr. Killingsworth his stomach was upset and asked for some Rolaids. Mr. Killingsworth said claimant indicated he had not eaten either that day or the evening before and was

hungry. Mr. Killingsworth gave claimant some Rolaids and offered to let claimant eat, but claimant declined.

Claimant and Mr. Killingsworth drove to Sam's Warehouse Club in their separate vehicles. Mr. Killingsworth told claimant that because claimant had an upset stomach, he should just sit and relax. Mr. Killingsworth and a Sam's employee loaded two tables and 40 chairs into claimant's truck. After the truck was loaded, Mr. Killingsworth told claimant that if he was not able to drive, he would call someone else in, but claimant said he thought he would be okay. Mr. Killingsworth told claimant he would follow the truck in his car and claimant was to pull over if he became too ill to drive. Conversely, claimant testified that when the trailer was loaded, he told Mr. Killingsworth he was too sick to drive and Mr. Killingsworth told him to drive to Vinita and then he could go home.

Claimant got in his truck and drove out onto the highway. The last time he looked at his speedometer he was traveling 55 miles per hour. At some point, claimant's truck drifted to the left outside of the lane of traffic. Claimant was unable to get his truck back into his lane of travel, and he lost control of his vehicle. He hit the guardrail and traveled 1,500 feet before coming to a stop. Claimant testified he was conscious all the time and did not pass out. Mr. Killingsworth followed claimant as he left Sam's and traveled toward Vinita. Mr. Killingsworth said soon after getting onto I-44, claimant drifted over to the right so that all the tires of the truck were on the shoulder, and then suddenly claimant went left all the way across both lanes of traffic and hit the guardrail.

Claimant hit his head on the steering wheel in the accident. He said after the accident he may have passed out for a few minutes. He felt pain in his lower back, ribs and head. He was still having flu-like symptoms after the accident. Claimant was taken to St. John's Regional Medical Center (St. John's) by ambulance. There, he complained of head and low back pain that was a six on a scale of ten. Claimant had scrapes and bruises on his head and an open area on his right knuckle from the motor vehicle accident. St. John's emergency room records indicate claimant came in because he had a syncopal episode and "then woke up," and his truck was in the guardrail. Claimant was admitted to the hospital from the emergency room. His admitting diagnosis/complaint was a "syncopal episode."

After claimant's admission in the hospital, he was treated by Dr. Connie Drapcho. In the history and physical, Dr. Drapcho noted claimant was a "53-year-old with known diet-controlled diabetes mellitus who was admitted through the ER after an episode of syncope earlier today."[1] Claimant gave the following history:

> He ate breakfast as per normal, but then as he was driving, he started to feel lightheaded and nauseated and noticed a pain in the left upper quadrant, high,

[1] Stipulation filed July 23, 2012.

> underneath his ribs. Symptoms persisted. At some point he got out and actually was in the parking lot while others unloaded his truck for him. His said symptoms worsened. He went in to use the restroom and had two episodes of diarrhea, no blood. His nausea worsened. He felt lightheaded and dizzy. He wanted to go to lay down, but says his boss was with him in another vehicle and urged him to drive to the short distance to where he could lay down, with his boss following in another vehicle. The patient reports that as he was driving he just felt worse and worse and felt presyncopal. He last remembers putting on his blinker and applying the brake to slow his vehicle down. The next thing he knows, he awoke and apparently was slumped over the steering wheel with a bruise to his forehead area . . .."[2]

Continuing in the history and physical, Dr. Drapcho stated, "Admission [to the hospital] was advised for further evaluation and treatment of [claimant's] diabetes which Dr. Schaefer felt likely was the contributing factor for his syncope."[3] Claimant reported that two years earlier he had passed out while unloading a truck. Claimant said he had brought his blood sugars down into the 118 to 130 range so had not checked his blood sugar for some time. The assessment/plan for claimant's hospitalization included treatment for syncope and out of control diabetes mellitus.

Claimant had various tests run while he was hospitalized at St. John's. Syncope and motor vehicle accident were listed as the reason for obtaining a CT scan of claimant's head. The CT scan was normal.

Claimant had a chest x-ray. The x-ray report indicates claimant had a history of "MVA, chest pain."[4] The x-ray findings indicated:

> There is no acute infiltration, or effusion. No pulmonary vascular accentuation. Heart size is within normal limits. Mediastinal structures are midline. Note is made of a linear air density left subdiaphragmatic region. Findings likely represent gastric shadow. However, with patient's history of MVA if clinical suspicion is high for traumatic viscus injury correlation with CT evaluation is recommended.[5]

The CT of claimant's abdomen, showing a history of a motor vehicle accident and left sided pain, indicated there was no evidence of acute injury in the abdomen or pelvis.

Claimant was given an EKG, which was also indicated by claimant's syncope. The EKG showed claimant had mild carotid disease bilaterally, and it also appeared claimant's

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[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

thyroid was enlarged. Claimant had a Cardiolite imaging test, a cardiology procedure, to evaluate claimant for potential ischemia, which was indicated by claimant's syncope. No angina was noted during the test, and the test was negative for ischemia. A thyroid ultrasound was performed, which showed claimant had a thick isthmus, but the rest of the test was within normal limits.

Claimant was dismissed from St. John's on October 1, 2010. Dr. Drapcho's discharge summary noted claimant was a 53-year-old "diet-controlled" diabetic who was admitted through the emergency room after an "episode of unresponsiveness which developed while driving earlier in the day."[6] The discharge summary also noted that "[i]n view of the questionable free air under his diaphragm, [claimant] did undergo a state CT scan of his abdomen and pelvis," and the overall impression was "no evidence of acute injury to the abdomen."[7] Dr. Drapcho believed claimant likely had a viral syndrome. Claimant's symptoms improved with Protonix and fluids by IV. By his first full hospital day claimant had no nausea, vomiting or diarrhea; was able to eat; and had no dizziness when up. Discharge diagnoses were: (1) syncope felt secondary to volume depletion and possible vasovagal reaction with abdominal pain and nausea; (2) acute gastroenteritis, resolved; (3) diabetes mellitus, out of control on presentation; (4) dehydration secondary to gastrointestinal illness and out-of-control diabetes; (5) mild carotid atherosclerosis; (6) thrombocytopenia, suspect secondary to acute viral process; and (7) abnormal thyroid ultrasound with thick isthmus.

After claimant was dismissed from the hospital, he was seen by the company doctor for the Vinita branch, Dr. Dill. Dr. Dill told claimant he was able to return to work. Claimant returned to work for respondent but continued to have problems with his low back and right hip. He sought treatment on his own, and eventually Dr. Terrence Pratt was appointed by the ALJ as claimant's authorized treating physician. Dr. Pratt was provided the claimant's medical records, including St. John's, Dr. Dill and Dr. Seglie. After reviewing the records and examining claimant, Dr. Pratt opined that claimant's syncopal episode of September 29, 2010, occurred in relation to claimant's general medical issues. He further noted that there was no indication in St. John's records that claimant was treated for low back pain during his hospitalization.

Dr. Pratt first saw claimant on April 11, 2011.[8] Claimant's chief complaint was low back pain. Claimant told Dr. Pratt he felt low back pain when he was placed on a stretcher

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[6] *Id.*

[7] *Id.*

[8] Claimant's last day of work for respondent was April 15, 2011. He has not worked anywhere since and applied for and received Social Security disability benefits. On April 18, 2011, claimant was involved in a car accident in which he suffered injuries to his neck and right shoulder. There is no evidence in the record that claimant suffered any injuries to his low back or lower extremities as a result of that accident.

and also when he was jerked on a table at St. John's during some testing. Dr. Pratt sent claimant to physical therapy. He ordered an MRI of claimant's low back, which revealed multilevel degenerative changes. He sent claimant for epidural injections, which provided claimant only temporary relief. He then sent claimant to Dr. Adrian Jackson for a surgical consultation, but Dr. Jackson found that claimant was not a good surgical candidate.

In August 2011, Dr. Pratt noted claimant had tremors and an unsteady balance. He did not relate the tremors or the unsteadiness to the accident of September 29, 2010. Dr. Pratt sent claimant for a functional capacity evaluation in September 2011, after which he issued claimant permanent restrictions of occasional lifting to 35 pounds, frequent lifting to 20 pounds, maximum push/pull occasionally 65 pounds and frequently 40 pounds, and no frequent low back bending or twisting. He released claimant from treatment on October 4, 2011.

Dr. Pratt did not give a causation opinion, nor did he rate claimant's impairment. He reviewed a task list prepared by Karen Terrill.[9] Of the 33 tasks on the list, he opined claimant would be unable to perform 15 for a 45 percent task loss.

Dr. Edward Prostic, a board certified orthopedic surgeon, saw claimant on two occasions, both at the request of claimant's attorney. His first examination of claimant was on January 12, 2011. Claimant reported to him that on September 29, 2010, he had been driving a truck when he lost his vision and blacked out. Claimant lost control of his truck, hit a guardrail, and traveled approximately 1500 feet along the guardrail. He was taken to the emergency room, where he was admitted. Claimant had hit his head in the accident, which was confirmed by the admissions information from the hospital. The admissions data also confirmed that claimant reported head and low back pain of 6 on a scale of 10. Dr. Prostic understood from the hospital records that claimant lost consciousness after he hit his head and brought the vehicle to a stop. This is consistent with what claimant told him. Dr. Prostic reviewed the medical records from St. John's and opined that but for the motor vehicle accident, claimant would not have needed hospitalization. He believed claimant would have taken care of any personal medical condition he suffered from had it not been for the motor vehicle accident.

Dr. Prostic acknowledged claimant was admitted to the hospital with gastroenteritis with secondary hydration, diabetes and thrombocytopenia. Gastroenteritis with secondary dehydration is usually a viral infection of the gastrointestinal tract with vomiting and diarrhea, which can cause people to become dehydrated. Dr. Prostic said claimant had that condition before the car accident. Claimant's diabetes was not caused by the motor vehicle accident. Thrombocytopenia is a deficiency of platelets. Dr. Prostic said there are

[9] Karen Terrill interviewed claimant by telephone on December 7, 2011, at the request of claimant's attorney. She prepared a list of 33 unduplicated tasks that claimant had performed in the 15-year period before his accident of September 29, 2010.

many causes of thrombocytopenia, but none of them would be related to a car accident. Dr. Prostic said St. John's records seem to show that claimant's time in the hospital was spent trying to determine what caused him to black out. Dr. Prostic said the presyncopal episode was caused by claimant's work because he was asked to drive the vehicle instead of being able to lie down and rehydrate.

After examining claimant, Dr. Prostic said claimant had significant preexisting degenerative disc disease that was aggravated by the motor vehicle accident. Dr. Prostic recommended treatment that included anti-inflammatory medication and aerobic exercises. If those were not successful, he recommended physical therapy. Dr. Prostic opined claimant's injuries were caused or contributed to by the motor vehicle accident on or about September 29, 2010.

Claimant returned to Dr. Prostic for a re-evaluation of his work-related injury on November 1, 2011. Since his last evaluation, claimant had been treated by Dr. Pratt. Dr. Prostic said a major change in claimant's physical examination was that claimant had a very poor sense of balance. Dr. Prostic diagnosed claimant with aggravated preexisting degenerative arthritis and spondylolisthesis as a result of the motor vehicle accident of September 29, 2010. Dr. Prostic noted that claimant had a tremor during purposeful activity, as well as poor balance. Dr. Prostic suspected claimant had an additional problem from either his head or neck. Dr. Prostic said claimant needed more diagnosis before he could give a causation opinion for claimant's tremors and balance problems.

Dr. Prostic restricted claimant to light to medium level employment with avoidance of frequent bending or twisting at the waist, forceful pushing or pulling, more than minimal use of vibrating equipment, and captive positioning. The restrictions are the result of the low back injury only. Using the AMA *Guides*,[10] Dr. Prostic rated claimant as having a 20 percent permanent partial impairment to the body as a whole as a result of his work injury of September 29, 2010. The impairment rating is a result of the low back injury only.

Dr. Prostic reviewed the task list prepared by Karen Terrill. Of the 33 unduplicated tasks on the list, Dr. Prostic opined that claimant is unable to perform 21 for a 64 percent task loss.

Dr. Peter Bieri examined claimant on May 29, 2012, at the request of the ALJ. Claimant gave a history that he suffered a syncopal episode while driving his truck and that he blacked out, resulting in a motor vehicle accident. Claimant was taken by ambulance to St. John's and admitted for observation.

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[10] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

Claimant complained of persistent low back pain made worse with lifting, bending or twisting. The pain radiated to the right calf. He had occasional numbness and tingling. Claimant said he had spells of dizziness and poor coordination. Dr. Bieri opined that claimant incurred injury on or about September 29, 2010, with residuals involving the low back with a diagnosis consistent with aggravation of preexisting degenerative joint disease and spondylolisthesis. Dr. Bieri found that diagnosis to be reasonable and appropriate. Based on the AMA *Guides*, Dr. Bieri placed claimant in DRE Lumbosacral Category III and rated claimant as having a 10 percent permanent partial impairment to the whole body. Dr. Bieri reviewed the task list of Ms. Terrill. Of the 33 tasks on the list, he said claimant was unable to perform 13 for a 39 percent task loss.

PRINCIPLES OF LAW

K.S.A. 2010 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2010 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[11] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[12]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which

[11] K.S.A. 2010 Supp. 44-501(a).

[12] *Kindel v. Ferco Rental, Inc*., 258 Kan. 272, 278, 899 P.2d 1058 (1995).

> the accident occurred and means the injury happened while the worker was at work in the employer's service.[13]

In *Hensley*[14], the Kansas Supreme Court adopted a risk analysis. It categorized risks into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the workman; and (3) neutral risks which have no particular employment or personal character.

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[15] The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.[16] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[17]

K.S.A. 2010 Supp. 44-510h(a) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

K.S.A. 44-510e(a) states in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged

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[13] *Id.* at 278.

[14] *Hensley v. Carl Graham Glass*, 226 Kan. 256, 258, 597 P.2d 641 (1979).

[15] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

[16] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

[17] *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

> together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

ANALYSIS

1. Arising Out of and in the Course of Employment

This is a case where it is difficult to tell exactly what caused the accident to occur. There is evidence that claimant was dehydrated. There is evidence that claimant is diabetic. The medical records of St. John's Hospital and Dr. Drapcho support that claimant suffered from an episode of syncope. Dr. Prostic testified that claimant was losing his vision before the accident. Based upon the medical evidence, the Board finds that the accident occurred because claimant suffered from an episode of syncope.

The ALJ found the *Bennett v. Wichita Fence Co.*[18] case to be the controlling rule of law. In *Bennett*, the claimant suffered an epileptic seizure while driving for his employer. In this case, claimant was suffering from a loss of consciousness due to a variety of medical conditions. The trigger for compensability in *Bennett* is whether the personal condition is tied in with some hazard of employment. The fact claimant was driving the employer's vehicle in the course of his employment subjected him to the hazards associated with driving on the public highways. The Board finds that claimant suffered an injury by accident arising out of and in the course of his employment.

2. Nature and Extent of Disability

The evidence in the record of functional impairment is offered by Dr. Prostic and Dr. Bieri. Neither physician provided treatment for the claimant. Dr. Bieri, the court ordered examining physician, assessed a 10% body as a whole functional impairment. Neither party saw it necessary to take Dr. Bieri's deposition and challenge his opinion. As such, Dr. Bieri's rating is found to be credible. Dr. Prostic assessed a 20% body as a whole impairment rating for an aggravation of pre-existing degenerative disc disease and

[18] *Bennett v. Wichita Fence Co.*, 16 Kan.App.2d 458, 460, 824 P.2d 1001 (1992).

spondylolisthesis. Dr. Prostic's rating report was placed into evidence without objection. There is no evidence that Dr. Prostic's rating lacks credibility. The Board agrees with the ALJ that the ratings should be averaged to arrive at a permanent impairment of function of 15% whole body.

3. Work Disability

a. Wage Loss

The record reflects that claimant returned to work in an accommodated position until April 15, 2011. Claimant's accommodation came to an end when he was provided with permanent restrictions by Dr. Pratt. The claimant has not worked anywhere since he was terminated and is currently receiving Social Security disability benefits. There is no evidence in the record that claimant is currently working for wages. As such, the Board finds that claimant has a 100% wage loss.

b. Task Loss

Dr. Pratt, the authorized treating physician, assessed a task loss of 45%. Dr. Bieri, the court ordered examining physician, assessed a 39% task loss. Dr. Prostic assessed a 64% task loss due to restrictions related to the accident. There is no evidence showing that any of the task loss opinions lack credibility. As such, the Board averages the task loss opinions and finds that claimant experiences a 49.33% task loss.

4. Unauthorized Medical

The record reflects that claimant was taken to the emergency room by ambulance after the accident. K.S.A. 2010 Supp. 44-510h(a) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

Based upon a plain reading of the statute, the medical treatment would need to be related to the effects of the injury. The treatment related to the effects of the injury in this case would be limited to claimant's low back. The emergency service bills, including the ambulance and emergency room, are related to treatment provided while determining the extent to which claimant suffered any effects from the injury. However, once it was

determined that claimant did not need treatment for conditions related to his low back, and instead needed treatment for conditions unrelated to the accident, the respondent was no longer obligated to pay for treatment.

CONCLUSION

The Board finds that this is a compensable claim based upon *Bennett*. The Board finds that claimant has a 100% wage loss and a 49.33% task loss, resulting in a work disability of 74.66%. The Board finds that the respondent is liable to pay all medical bills related to claimant's low back injury, including all of Dr. Pratt's treatment. Further, the Board orders the respondent to pay the ambulance bill and all bills related to emergency services provided by St. John's Regional Medical Center. All other medical bills not related to the low back are found to be not compensable and are not ordered to be paid. If the respondent has paid, voluntarily or by order of the ALJ, medical bills to St. John's that are not related to claimant's low back, except those related to emergency services, such payment is found to be an overpayment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated August 2, 2012, is modified to reflect that medical bills not related to emergency services or claimant's low back conditions are not compensable. The Award is affirmed on all other issues.

IT IS SO ORDERED.

Dated this _____ day of January, 2013.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

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Brad E. Avery, Administrative Law Judge